DOCUMENT RESUME

ED 330 294 HE 024 405

TITLE	Equal Opportunity in Intercollegiate Athletics: Requirements under Title IX of the Education Amendments of 1972.
INSTITUTION	Office for Civil Rights (ED), Washington, DC.
PUB DATE	91
NOTE	11p.
AVAILABLE FROM	U.S. Department of Education, Office for Civil Rights, Washington, DC 20202-1328.
PUB TYPE	Legal/Legislative/Regulatory Materials (090) -- Guides - Non-Classroom Use (055)
EDRS PRICE	MF01/PC01 Plus Postage.
DESCRIPTORS	Athletics; *College Athletics; Colleges; *Compliance (Legal); *Educational Legislation; *Extramural Athletics; Higher Education; Intercollegiate Cooperation; *Intramural Athletics; Laws; *Legislation; Policy; Universities
IDENTIFIERS	*Title IX Education Amendments 1972

ABSTRACT

To clarify the athletic requirements contained in the Title IX regulations of the Education Amendment of 1972, this policy interpretation was designed to provide colleges and universities with more guidance on how to comply with the law. The obligations of colleges and universities are clarified in the following areas: student interests and abilities; athletics benefits and opportunities; and financial assistance. Although designed specifically for intercollegiate athletics, the general principles and compliance standards set forth in the document are applicable to several interscholastic athletic programs operated by elementary and secondary school systems. Appended is a list of 10 regional civil rights offices, their addresses and telephone numbers. (LPT)

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Equal Opportunity In Intercollegiate Athletics: Requirements Under Title IX of the Education Amendments of 1972

U.S. Department of Education
Office for Civil Rights
Washington, D.C. 20202-1328

INTRODUCTION

Title IX of the Education Amendments of 1972 (20 U.S.C. §1681 *et seq.*) prohibits discrimination on the basis of sex in education programs receiving Federal financial assistance. Athletics are considered an integral part of an institution's education program and are therefore covered by this law. It is the responsibility of the Department of Education (ED), Office for Civil Rights (OCR), to assure that athletic programs are operated in a manner that is free from discrimination on the basis of sex.

The regulation (34 C.F.R. Part 106) implementing Title IX contains specific provisions relating to athletic opportunities. It also permits individual institutions considerable flexibility in achieving compliance with the law.

To clarify the athletic requirements contained in the Title IX regulation, a Policy Interpretation was issued to provide colleges and universities with more guidance on how to comply with the law. The Policy Interpretation, which explains the standards of the regulation, clarifies the obligations of colleges and universities in three basic areas:

- student interests and abilities;
- athletic benefits and opportunities; and
- financial assistance.

While designed specifically for intercollegiate athletics, the general principles and compliance standards set forth in the Policy Interpretation will often apply to interscholastic athletic programs operated by elementary and secondary school systems, and to club and intramural athletic programs.

STUDENT INTERESTS AND ABILITIES

The athletic interests and abilities of male and female students must be equally and effectively accommodated. Compliance with this factor is

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assessed by examining a school's: (a) determination of the athletic interests and abilities of its students; (b) selection of the sports that are offered; and (c) levels of competition, including opportunity for team competition.

Measuring Athletic Interests

Colleges and universities have discretion in selecting the methods for determining the athletic interests and abilities of their students, as long as those methods are nondiscriminatory. The only requirements imposed are that institutions used methods that:

- take into account the nationally increasing level of women's interests and abilities;
- do not disadvantage the underrepresented sex (i.e., that sex whose participation rate in athletics is substantially below its enrollment rate);
- take into account team performance records of both male and female teams; and
- respond to the expressed interests of students capable of intercollegiate competition who belong to the underrepresented sex.

Selection of Sports

A college or university is not required to offer particular sports or the same sports for each sex. Also, an institution is not required to offer an equal number of sports for each sex. However, an institution must accommodate to the same degree the athletic interests and abilities of each sex in the selection of sports.

A college or university may sponsor separate teams for men and women where selection is based on competitive skill or when the activity is a contact sport. Contact sports under the Title IX regulation include boxing, wrestling, rugby, ice hockey, football, basketball and other sports in which the purpose or major activity involves bodily contact.

Equally effective accommodation also requires a college or university that sponsors a team for only one sex to do so for members of the other sex under certain circumstances. This applies to contact and noncontact sports. For example, a separate team may be required if there is sufficient interest and ability among members of the excluded sex to sustain a team and a reasonable expectation of competition for that team. Also, where an institution sponsors a team in a particular noncontact sport for members of one sex, it must allow athletes of the other sex to try-out for the team if, historically, there have been limited athletic opportunities for members of the excluded sex.

Levels of Competition

Colleges and universities must provide opportunity for intercollegiate competition as well as team schedules which equally reflect the competitive abilities of male and female athletes. An institution's compliance in this area may be assessed in any one of the following ways:

- the numbers of men and women participating in intercollegiate athletics are substantially proportionate to their overall enrollment; or
- where members of one sex are underrepresented in the athletics program, whether the institution can show a continuing practice of program expansion responsive to the developing interests and abilities of that sex; or
- the present program accommodates the interests and abilities of the underrepresented sex.

In considering equivalent opportunities for levels of competition, compliance will be assessed by examining whether:

- male and female athletes, in proportion to their participation in athletic programs, are provided equivalently advanced competitive opportunities; or

- the institution has a history and continuing practice of upgrading the competitive opportunities available to the historically disadvantaged sex as warranted by the developing abilities among the athletes of that sex.

olleges and universities are not required to evelop or upgrade an intercollegiate team if there no reasonable expectation that competition will e available for that team within the institution's ormal competitive region. However, an institution may be required to encourage development f such competition when overall athletic opportunities within that region have been historically mited for the members of one sex.

iscriminatory rules established by a governing thletic organization, or league do not relieve recipients of their Title IX responsibilities. For example, a college or university may not limit the ligibility or participation of women based on olicies or requirements imposed by an intercollegiate athletic body.

THLETIC BENEFITS AND PPORTUNITIES

determining whether equal opportunities in thletics are available, the Title IX regulation pecifies the following factors which must be onsidered:

- accommodation of athletic interests and abilities (which is addressed separately in the section above);
- equipment and supplies;
- scheduling of games and practice time;
- travel and per diem allowances;
- opportunity for coaching and academic tutoring;
- assignment and compensation of coaches and tutors;
- locker rooms and other facilities;

- medical and training services;
- housing and dining services; and
- publicity.

The Title IX regulation also permits OCR to consider other factors in determining whether there is equal opportunity. Accordingly, the Policy Interpretation added recruitment of student athletes and provision of support services, since these factors can affect the overall provision of equal opportunity to male and female athletes.

The Policy Interpretation clarifies that institutions must provide *equivalent* treatment, services, and benefits regarding these factors. The overall equivalence standard allows institutions to achieve their own program goals within the framework of providing equal athletic opportunities. To determine equivalency for men's and women's athletic programs, each of the factors is assessed by comparing the following:

- availability;
- quality;
- kind of benefits;
- kind of opportunities; and
- kind of treatment.

Under this equivalency standard, identical benefits, opportunities, or treatment are not required. For example, locker facilities for a women's team do not have to be the same as for a men's team, as long as the effect of any differences in the overall athletic program are negligible.

If a comparison of program components indicates that benefits, opportunities, or treatment are not equivalent in quality, availability, or kind, the institution may still be in compliance with the law if the differences are shown to be the result of nondiscriminatory factors. Generally, these differences will be the result of unique aspects of particular sports or athletic activities, such as the nature/

replacement of equipment and maintenance of facilities required for competition. Some disparities may be related to special circumstances of a temporary nature. For example, large disparities in recruitment activity for any particular year may be the result of annual fluctuations in team needs for first-year athletes. Difficulty in compliance will exist only if disparities are of a substantial and unjustified nature in a school's overall athletic program; or if disparities in individual program areas are substantial enough in and of themselves to deny equality of athletic opportunity. This equivalency approach allows institutions great flexibility in conducting their athletic programs and maintaining compliance without compromising the diversity of athletic programs among institutions.

FINANCIAL ASSISTANCE

To the extent that a college or university provided athletic scholarships, it is required to provide reasonable opportunities for such awards to members of each sex in proportion to the participation rate of each sex in intercollegiate athletics. This does not require the same number of scholarships for men and women or individual scholarships of equal value.

However, the total amount of assistance awarded to men and women must be *substantially proportionate* to their participation rates in athletic programs. In other words, if 60 percent of an institution's intercollegiate athletes are male, the total amount of aid going to male athletes should be approximately 60 percent of the financial aid dollars the institution awards.

Disparities in awarding financial assistance may be justified by legitimate, nondiscriminatory (sex-neutral) factors. For example, at some institutions the higher costs of tuition for out-of-state residents may cause an uneven distribution between scholarship aid to men's and women's programs. These

differences are nondiscriminatory if they are not the result of limitations on the availability of out-of-state scholarships to either men or women. Differences also may be explained by professional decisions college and university officials make about program development. An institution beginning a new program, for example, may spread scholarships over a full generation (four years) of student athletes, thereby, awarding fewer scholarships during the first few years than would be necessary to create proportionality between male and female athletes.

ACHIEVING EQUAL OPPORTUNITY

Before the enactment of Title IX, most colleges and universities traditionally emphasized sports for male students, and the benefits and educational opportunities in athletic programs generally were limited for women. Title IX has helped focus attention on meeting the needs of women interested in athletics and helped education officials to recognize their responsibilities regarding the provision of equal athletic opportunity. The result has been increased involvement of girls and women in sports at all levels. OCR supports the efforts of education officials to comply with the requirements of Title IX by offering a program of technical assistance to institutions receiving Federal funds as well as to beneficiaries of those funds. OCR's technical assistance program is designed to provide education officials with the skills and knowledge necessary to apply the laws to their own circumstances and thereby facilitate voluntary compliance. OCR's principle enforcement activity is the investigation and resolution of discrimination complaints.

Anyone wishing additional information regarding the compliance and technical assistance program may contact the OCR regional office serving his or her state or

erritory. The addresses and telephone numbers of the regional civil rights offices are included at the back of the pamphlet. Copies of the Title IX law, regulation, and Policy Interpretation are available upon request.

U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGIONAL CIVIL RIGHTS OFFICES

REGION I

Connecticut, Maine, Massachusetts,
New Hampshire, Rhode Island, Vermont

Regional Civil Rights Director
U.S. Department of Education
Office for Civil Rights, Region I
John W. McCormack Post Office and
Courthouse Building, Rm. 222
Boston, Massachusetts 02109-4557
(617) 223-9662 TDD (617) 223-9695

REGION II

New Jersey, New York, Puerto Rico,
Virgin Islands

Regional Civil Rights Director
U.S. Department of Education
Office for Civil Rights, Region II
26 Federal Plaza, 33rd Floor, Room 33-130
New York, New York 10278-0082
(212) 264-4633 TDD (212) 264-9464

REGION III

Delaware, District of Columbia, Maryland,
Pennsylvania, Virginia, West Virginia

Regional Civil Rights Director
U.S. Department of Education
Office for Civil Rights, Region III
3535 Market Street, Room 6300
Philadelphia, Pennsylvania 19104-3326
(215) 596-6772 TDD (215) 596-6794

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REGION IV

Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee

Regional Civil Rights Director
U.S. Department of Education
Office for Civil Rights, Region IV
101 Marietta Tower - 27th Floor, Suite 2702
Mail To: P.O. Box 1705
Atlanta, Georgia 30301-1705
(404) 331-2954 TDD (404) 331-7816

REGION V

Illinois, Indiana, Minnesota, Michigan, Ohio, Wisconsin

Regional Civil Rights Director
U.S. Department of Education
Office for Civil Rights, Region V
401 South State Street - 7th Floor, Room 700C
Chicago, Illinois 60605-1202
(312) 886-3456 TDD (312) 353-2541

REGION VI

Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Regional Civil Rights Director
U.S. Department of Education
Office for Civil Rights, Region VI
1200 Main Tower Building Suite 2260
Dallas, Texas 75202-9998
(214) 767-3959 TDD (214) 767-3639

REGION VII

Iowa, Kansas, Missouri, Nebraska

Regional Civil Rights Director
U.S. Department of Education
Office for Civil Rights, Region VII
P.O. Box 901381
10220 N. Executive Hills Blvd., 8th Floor
Kansas City, Missouri 64190-1381
(816) 891-8026

REGION VIII

Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Region Civil Rights Director
U.S. Department of Education
Office for Civil Rights, Region VIII
1961 Stout Street, Room 342
Denver, Colorado 80294-3608
(303) 844-5695 TDD (303) 844-3417

REGION IX

Arizona, California, Hawaii, Nevada, Guam, Trust Territory of the Pacific Islands, American Samoa

Regional Civil Rights Director
U.S. Department of Education
Office for Civil Rights, Region IX
221 Main Street, 10th Floor, Suite 1020
San Francisco, California 94105-1925
(415) 227-8040 TDD (415) 227-8124

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REGION X

Alaska, Idaho, Oregon, Washington

Regional Civil Rights Director
U.S. Department of Education
Office for Civil Rights, Region X
Mail Code 10-9010
915 Second Avenue, Room 3310
Seattle, Washington 98174-1099
(206) 442-1636 TDD (206) 442-4542

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